AMENDED IN ASSEMBLY MAY 10, 2007

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL No. 1651

Introduced by Assembly Member Arambula

February 23, 2007

An act to add ~~Sections 17053.71 and 23671 to the Revenue and Taxation Code, relating to environmental quality~~ *and repeal Sections 17053.97 and 23665 of the Revenue and Taxation Code, relating to taxation*, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1651, as amended, Arambula. ~~Environmental quality: tax credit: qualified green machinery.~~ *Taxation: tax credits: qualified capital equipment.*

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would, *under both laws,* authorize a credit against those taxes for each taxable year beginning on or after January 1, ~~2007~~ *2008, and before January 1, 2013*, in an amount equal to *a specified percentage of* the amount paid or incurred during the taxable year ~~by a qualified green business, as defined, for purchasing or upgrading qualified green machinery, as defined~~ *for qualified capital equipment certified by the California Climate Action Registry or the State Air Resources Board to result in measurable reductions in greenhouse gases*.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 17053.97 is added to the Revenue and Taxation Code, to read:

17053.97. (a) For taxable years beginning on or after January 1, 2008, and ending before January 1, 2013, there shall be allowed as a credit against the "net tax," as defined in Section 17039, to a qualified taxpayer an amount as provided in subdivision (b) for the qualified costs paid or incurred for qualified capital equipment placed in service in this state.

(b) The credit allowed by subdivision (a) shall be in an amount as follows:

(1) For taxable years beginning on or after January 1, 2008, and before January 1, 2010, 15 percent of the qualified costs.

(2) For taxable years beginning on or after January 1, 2010, and before January 1, 2012, 8 percent of the qualified costs.

(3) For taxable years beginning on or after January 1, 2012, and before January 1, 2013, 3 percent of the qualified costs.

(c) For purposes of this section:

(1) "Capitalized labor costs" means costs for labor directly allocable to the construction or installation of qualified capital property that is properly charged to the capital account of the taxpayer.

(2) "Eligible greenhouse gas reduction" means a measurable reduction in the greenhouse gas emissions of the facility in which the qualified capital equipment is placed in service and maintained, beyond the reductions in the qualified taxpayer's greenhouse gas emission of that facility as required by law.

(3) "Greenhouse gas" has the same meaning as defined in Section 38505 of the Health and Safety Code.

(4) "Purchase" means any transaction that is treated as a sale under Part 1 (commencing with Section 6001) of Division 2.

(5) "Qualified capital equipment" means equipment that meets all of the following requirements:

(A) Is tangible personal property as defined in Section 1245(a)(3)(A) of the Internal Revenue Code.

(B) Is newly constructed or fabricated and not reconstructed or refabricated.

(C) Is used exclusively in California by the qualified taxpayer who first placed the equipment in service.

(D) Is certified by the California Climate Action Registry or the State Air Resources Board that it has been placed in service and is operational.

(E) Is certified by the California Climate Action Registry or the State Air Resources Board that its operation will result in measurable reductions in greenhouse emissions.

(F) Produces an eligible greenhouse gas reduction.

(G) The original use of the equipment commences with the qualified taxpayer.

(6) "Qualified cost" means any costs that satisfies all of the following conditions:

(A) Is a cost paid or incurred on or after January 1, 2008, and before January 1, 2013, for the construction or purchase, including, installation costs, of qualified capital equipment during the taxable year.

(B) Is an amount, other than capitalized labor costs, upon which the qualified taxpayer has paid, directly or indirectly, as a separately stated contract amount or as determined from the records of the taxpayer, sales or use tax imposed under Part 1 (commencing with Section 6001) of Division 2.

(C) Is properly charged to the capital account of the taxpayer.

(7) "Qualified taxpayer" means a taxpayer who reports their greenhouse gas emissions, either on a voluntary or mandatory basis, to the California Climate Action Registry or the State Air Resources Board.

(d) For qualified capital equipment that produces measurable reductions in greenhouse gas emissions as both required by law and beyond those requirements, the amount of the credit allowed by this section is limited to an amount in excess of standard costs for equipment required to meet existing law or regulations. The State Air Resources Board shall promulgate a rule or regulation necessary to establish a standard cost for equipment that meets existing requirements, whether in law or by regulation.

(e) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net

tax” in the following year, and the succeeding seven years if necessary, until the credit is exhausted.

(f) This section shall remain in effect only until December 1, 2013, unless a later enacted statute, which is enacted before December 1, 2013, deletes or extends that date.

SEC. 2. Section 23665 is added to the Revenue and Taxation Code, to read:

23665. (a) For taxable years beginning on or after January 1, 2008, and ending before January 1, 2013, there shall be allowed as a credit against the “tax,” as defined in Section 23036, to a qualified taxpayer an amount as provided in subdivision (b) for the qualified costs paid or incurred for qualified capital equipment placed in service in this state.

(b) The credit allowed by subdivision (a) shall be in an amount as follows:

(1) For taxable years beginning on or after January 1, 2008, and before January 1, 2010, 15 percent of the qualified costs.

(2) For taxable years beginning on or after January 1, 2010, and before January 1, 2012, 8 percent of the qualified costs.

(3) For taxable years beginning on or after January 1, 2012, and before January 1, 2013, 3 percent of the qualified costs.

(c) For purposes of this section:

(1) “Capitalized labor costs” means costs for labor directly allocable to the construction or installation of qualified capital property that is properly charged to the capital account of the taxpayer.

(2) “Eligible greenhouse gas reduction” means a measurable reduction in the greenhouse gas emissions of the facility in which the qualified capital equipment is placed in service and maintained, beyond the reductions in the qualified taxpayer’s greenhouse gas emission of that facility as required by law.

(3) “Greenhouse gas” has the same meaning as defined in Section 38505 of the Health and Safety Code.

(4) “Purchase” means any transaction that is treated as a sale under Part 1 (commencing with Section 6001) of Division 2.

(5) “Qualified capital equipment” means equipment that meets all of the following requirements:

(A) Is tangible personal property as defined in Section 1245(a)(3)(A) of the Internal Revenue Code.

(B) Is newly constructed or fabricated and not reconstructed or refabricated.

(C) Is used exclusively in California by the qualified taxpayer who first placed the equipment in service.

(D) Is certified by the California Climate Action Registry or the State Air Resources Board that it has been placed in service and is operational.

(E) Is certified by the California Climate Action Registry or the State Air Resources Board that its operation will result in measurable reductions in greenhouse emissions.

(F) Produces an eligible greenhouse gas reduction.

(G) The original use of the equipment commences with the qualified taxpayer.

(6) "Qualified cost" means any costs that satisfies all of the following conditions:

(A) Is a cost paid or incurred on or after January 1, 2008, and before January 1, 2013, for the construction or purchase, including, installation costs, of qualified capital equipment during the taxable year.

(B) Is an amount, other than capitalized labor costs, upon which the qualified taxpayer has paid, directly or indirectly, as a separately stated contract amount or as determined from the records of the taxpayer, sales or use tax imposed under Part 1 (commencing with Section 6001) of Division 2.

(C) Is properly charged to the capital account of the taxpayer.

(7) "Qualified taxpayer" means a taxpayer who reports their greenhouse gas emissions, either on a voluntary or mandatory basis, to the California Climate Action Registry or the State Air Resources Board.

(d) For qualified capital equipment that produces measurable reductions in greenhouse gas emissions as both required by law and beyond those requirements, the amount of the credit allowed by this section is limited to an amount in excess of standard costs for equipment required to meet existing law or regulations. The State Air Resources Board shall promulgate a rule or regulation necessary to establish a standard cost for equipment that meets existing requirements, whether in law or by regulation.

(e) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in

the following year, and the succeeding seven years if necessary, until the credit is exhausted.

(f) This section shall remain in effect only until December 1, 2013, unless a later enacted statute, which is enacted before December 1, 2013, deletes or extends that date.

~~SECTION 1. Section 17053.71 is added to the Revenue and Taxation Code, to read:~~

~~17053.71. (a) For each taxable year beginning on or after January 1, 2007, there shall be allowed as a credit against the "net tax," as defined in Section 17039, an amount equal to the amount paid or incurred during the taxable year by a qualified green business for purchasing or upgrading qualified green machinery.~~

~~(b) For purposes of this section, all of the following apply:~~

~~(1) "Qualified green business" means a person or entity that meets both of the following criteria:~~

~~(A) The person or entity has never been fined for an environmental impropriety.~~

~~(B) The person or entity is engaged in the conduct of a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.~~

~~(2) "Qualified green machinery" means manufacturing machinery that, as purchased or upgraded, meets all of the following criteria:~~

~~(A) The machinery is more fuel efficient than the industry average for the machinery.~~

~~(B) The machinery releases less carbon dioxide than the industry average for the machinery.~~

~~(C) The machinery does not release ozone depleting substances.~~

~~(c) Any deduction otherwise allowed under this part for any amount paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit allowed under this section.~~

~~(d) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit is exhausted.~~

~~SEC. 2. Section 23671 is added to the Revenue and Taxation Code, to read:~~

~~23671. (a) For each taxable year beginning on or after January 1, 2007, there shall be allowed as a credit against the “tax,” as defined in Section 23036, an amount equal to the amount paid or incurred during the taxable year by a qualified green business for purchasing or upgrading qualified green machinery.~~

~~(b) For purposes of this section, all of the following apply:~~

~~(1) “Qualified green business” means a person or entity that meets both of the following criteria:~~

~~(A) The person or entity has never been fined for an environmental impropriety.~~

~~(B) The person or entity is engaged in the conduct of a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.~~

~~(2) “Qualified green machinery” means manufacturing machinery that, as purchased or upgraded, meets all of the following criteria:~~

~~(A) The machinery is more fuel efficient than the industry average for the machinery.~~

~~(B) The machinery releases less carbon dioxide than the industry average for the machinery.~~

~~(C) The machinery does not release ozone depleting substances.~~

~~(c) Any deduction otherwise allowed under this part for any amount paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit allowed under this section.~~

~~(d) In the case where the credit allowed by this section exceeds the “tax,” the excess may be carried over to reduce the “tax” in the following year, and succeeding years if necessary, until the credit is exhausted.~~

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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